

**MC/25/0965**

**Date Received:** 9 May 2025

**Location:** Land to the south of Former Upnor Public Convenience Including Foreshore and Bed of the River Medway, Lower Upnor, Rochester

**Proposal:** Partially retrospective planning application for the retention of steps, ramp pontoon, and 10no. piles (with some reduced in height to approximately 6m to reflect the height of the control pile), removal of 8no. piles, and provision of an additional pontoon, and use of former toilet building to supply facilities for those mooring boats including provision of WC and shower, drying and storage facilities.

**Applicant Agent** Kingfisher Access  
DHA Planning  
Mr John Collins  
Eclipse House  
Eclipse Park  
Sittingbourne Road  
Maidstone  
ME14 3EN

**Ward:** Strood Rural

**Case Officer:** Amanda Barnes

**Contact Number:** 01634 331700

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 6 May 2026.**

**Recommendation - Approval with Conditions**

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Received 9 May 2025

PP-13722885 Application Form

DHA/35378/06 Proposed Plans and Elevations Mooring Boat Storage

DHA/35378/07 Proposed Elevations Metal Piles and Pontoon

Received 17 December 2025

DHA/35378/01 Rev A - Site Location Plan

Received 19 January 2026

DHA/35378/20 rev C - Proposed Site Layout Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2 The existing and new pontoon shall be used only for the mooring of leisure based, self-propelled craft. At no time shall there be any residential use of the moored craft.

Reason: To ensure that the development does not impact the character, amenity and functioning of the area with regard to Policies BNE1, BNE2 and L13 of the Medway Local Plan 2003.

- 3 The re-purposed toilet block shall be used as a storage and wash facility for the users of the site only and for no other purpose. There shall be no overnight use of the block for residential purposes.

Reason: To ensure that the development does not impact the character, amenity and functioning of the area with regard to Policies BNE1, BNE2 and L13 of the Medway Local Plan 2003.

- 4 Any occupation of waterborne vessels moored on the application site shall only be on a temporary basis and shall not be occupied by any person for more than 5 consecutive days at any one time. A written log/record detailing the names, addresses and contact details of the boats and their occupants staying at the mooring and the dates of their arrival and departure shall be kept at all times that the mooring is in use. This written log/record shall be made available to the Local Planning Authority within 48 hours of a written request being delivered to the premises. No waterborne vessel that has accommodated overnight stays shall accommodate any overnight stays within 3 months of the last date of their departure. There shall be no occupation between 1 November and 1 March.

Reason: To clarify what has been granted planning permission, to ensure that the mooring is being used for this purpose and not for long term accommodation separate and not for the mooring of any houseboats, in the interests of amenity and with regard to Policy BNE2 of the Medway Local Plan 2003.

- 5 No more than 15 waterborne vessels shall be moored on the site at any one time.

Reason: To ensure that the development does not impact the character, amenity and functioning of the area with regard to Policies BNE1, BNE2 and L13 of the Medway Local Plan 2003.

- 6 No refuelling or maintenance activities of any water borne craft shall take place on-site at any time.

Reason: To ensure that the development does not have a negative impact on biodiversity in accordance with Policies BNE37 and BNE39 of the Medway Local Plan 2003.

- 7 Boats shall not leave or arrive at the site between 1 November and 1 March. Boats can only be stored on site during these months.

Reason: To ensure that the development does not have a cumulative negative impact on wintering birds in accordance with Policies BNE37 and BNE39 of the Medway Local Plan 2003.

- 8 The piles that are shown to be removed and those that are shown to be retained and reduced in height shall be removed/reduced within 9 months of the date on this decision notice and before any works are started on the new pontoon.

Reason: To ensure that the remaining piles integrate better into the surroundings in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 9 Prior to the first use of the development a plan setting out how waste will be stored and collected from the site shall be submitted to and approved in writing by the Local Planning Authority.

The development shall be implemented in accordance with the approved details and thereafter maintained for the lifetime of the development.

Reason: To ensure that the development does not negatively impact the visual amenity of the area by virtue of litter and waste in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 10 Prior to the first use of the development, full details of the Ecological Enhancements shall be submitted to and approved in writing by the Local Planning Authority. The details shall include how the development will enhance biodiversity and should incorporate the recommendations within the Arethusa Wharf Biodiversity Net Gain Design Stage Report and a timetable for implementation.

The development shall be implemented in accordance with the approved details and thereafter maintained for the lifetime of the development.

Reason: To ensure that the development has a positive impact on biodiversity in accordance with Policies BNE37 and BNE39 of the Medway Local Plan 2003.

- 11 No development shall take place (including any ground works, site or vegetation clearance) until a construction ecological management plan (CEMP - biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP - biodiversity) shall include the following and be based on the submitted Ocean Ecology Ecological Impact Assessment of a proposed mooring pontoon at Arethusa Wharf on the river Medway. Reference: OEL\_DHAARE0825\_EcIA\_V01 and up-to-date ecological survey information, ensuring consideration of wintering birds and as advised by a suitably qualified ecologist:

- Purpose and objectives for the proposed works:

- The identification of biodiversity protection zones and the use of protective fences, exclusion barriers and warning signs;
- Detailed design(s) and/or working method(s) necessary to achieve stated objectives;
- Extent and location of proposed works (including receptor areas(s) in case animals are encountered during development) shown on appropriate scale maps and plans for all relevant species and habitats;
- Reference to the relevant protected species/environmental licences to be obtained in advance of site clearance/construction and any relevant mitigation measures required;
- Reference to or inclusion of a detailed arboricultural method statement to protect retained trees;
- Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- Persons responsible for implementing the works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works; and
- Details of the safe disposal of any wastes for implementing measures.

The works shall be carried out in accordance with the approved details for the duration of site/vegetation clearance and construction.

Reason: Required prior to commencement to protect protected and priority habitats and species from adverse impacts during construction in accordance with paragraphs 187 through 195 of the NPPF 2024.

**For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.**

### **Proposal**

Partially retrospective planning application for the retention of steps, ramp pontoon, and 10no. piles (with some reduced in height to approximately 6m to reflect the height of the control pile), removal of 8no. piles, and provision of an additional pontoon, and use of former toilet building to supply facilities for those mooring boats including provision of WC and shower, drying and storage facilities.

### **Relevant Planning History**

ENF/22/0187            Enforcement notice issued on 22 December 2022  
                                   Appeal dismissed 24th June 2024

### **Representations**

The application has been advertised on site, in the press and by individual neighbour notification to the owners and occupiers of neighbouring properties. Frindsbury Extra Parish Council, Kent Wildlife Trust, RSPB and Natural England have also been consulted.

**Dickens' Country Protection Society** have advised that the Upnor River front as a valuable public asset and amenity. It should as far as possible be kept open with uninterrupted views of the river and the retaining structures of the river wall should be maintained.

**Frindsbury Extra Parish Council** – formally object to this retrospective planning application and are extremely disappointed that Medway Council has not taken legal proceedings to uphold the inspector's decision to dismiss the appellant's appeal.

To date, more than a year after the appeal decision, the houseboat has reportedly been removed. However, the piles, posts, jetty, ramps, stairs, and associated infrastructure remain in place, in direct contravention of the enforcement notice.

Councillors are of the opinion that this retrospective application demonstrates a disregard for the planning process. It appears to be an attempt to legitimise development that has already been deemed unacceptable through due process.

Furthermore, there are concerns that retaining these structures lays the groundwork for future applications to moor additional residential vessels at this site, effectively establishing a residential marina by incremental development.

Councillors also raise the following additional objections:

- **Inappropriate Location:** There are existing, suitable residential mooring facilities nearby, such as in Hoo and Cuxton. The character and setting of Upnor make it unsuitable for such development;
- **Access Issues:** Based on the submitted plans, there appears to be no direct access to the site from land in the applicant's ownership. The indicated access route crosses third-party land, and it is believed the applicant does not have legal rights of access;
- **Land Ownership Concerns:** The Parish Council does not believe the applicant owns any part of Upnor Road, despite what is shown in the submitted drawings;
- **Public Objection:** The Parish Council want to raise the high levels of local opposition which was expressed in a public meeting held on the 6 November 2024 and attended by 40-50 people from Upnor as well as written objections during the appeals process.

**Rochester Oyster and Floating Fishery (ROFF)** object:

- ROFF hold exclusive fishing rights within the River Medway from Sheerness to Hawkwood Stone, established by statute (Acts of Parliament). As a result of the statutes ROFF would have to agree to any works on the riverbed below the high-water mark, ROFF do not agree and, therefore, also raise an objection primarily on the grounds of infringement of fishing rights;
- ROFF members attended and indeed gave evidence to the recent public inquiry linked to this illegal and unauthorised development;
- An extant enforcement action is in place to remove all piles from this development;

- No prior authorisation was sought from Medway Council, Marine Management Organisation (MMO) nor ROFF for the existing works which this application appears to want to make use of;
- This "retrospective application" appears to be an attempt to circumvent the conditions of the enforcement notice duly served by the Planning Inspectorate/Medway Council;
- Should any planning be granted by Medway then the developers would need formally to also gain MMO approval by going through due process and as ROFF are a statutory consultee with MMO in relation to the river Medway the objection would be repeated in addition to any other issues raised by relevant consultees;
- MMO permissions have often of late even included a licence condition that the developer must prove to MMO that ROFF agreement is demonstrable.
- ROFF have also in the past taken independent legal action through the courts to confirm relevant rights;
- This development (in a slightly different form) has been refused by Public Inquiry already so the application should be rejected, and the enforcement notice complied with and the riverbed reinstated.

**Environment Agency** have advised that they have no objection to the proposed development; however, they wish to provide the following comments.

Informative - Flood Risk Activity Permit – the Environmental Permitting (England and Wales) Regulations 2016 require a permit to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal);
- on or within 8 metres of a flood defence structure or culvert (16 metres if tidal);
- on or within 16 metres of a sea defence;
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert;
- in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission.

Flood resistance and resilience – They strongly recommend the use of flood resistance and resilience measures. Physical barriers, raised electrical fittings and special construction materials are just some of the ways you can help reduce flood damage.

Flood risk issues not within our direct remit – The following issues are not within our direct remit or expertise but nevertheless may be important considerations for managing flood risk for this development. Prior to deciding this application, we recommend that consideration is given to the issues below. Where necessary, the advice of relevant experts should be sought.

- Adequacy of rescue or evacuation arrangements;
- Details and adequacy of an emergency plan;

- Provision of and adequacy of a temporary refuge;
- Details and adequacy of flood proofing and other building level resistance and resilience measures;
- Details and calculations relating to the structural stability of buildings during a flood;
- Whether insurance can be gained or not;
- Provision of an adequate means of surface water disposal such that flood risk on and off-site isn't increased.

Biodiversity Net Gain (BNG) (intertidal) – The Environment Act 2021 introduced a requirement for mandatory Biodiversity Net Gain (BNG) on most types of Town and Country Planning Act (TCPA) development. Biodiversity net gain offers an opportunity to promote and achieve our desired environmental outcomes – nature recovery, natural flood management, nature-based solutions and green and blue infrastructure.

They have not reviewed any submitted BNG information in detail and their position on this application does not mean the biodiversity gain objective has been met. In line with the “Biodiversity Net Gain” section of the Planning Practice Guidance, it is the role of the Local Planning Authority role to decide if the BNG requirement for development in scope has been met.

Intertidal habitats should be recorded within the area unit module of the metric. Applicants should record areas of intertidal habitats which are above water at low tide and under water at high tide.

**8 letters** of objection have been received relating to:

- The historic river front at Upnor needs to be fully protected and the views of the river unimpeded by new moorings for houseboats etc;
- The previous, unauthorised piling work should also be removed and the riverbank and bed restored to its original state;
- Hoo Marina would be a more suitable site;
- The current setup looks awful and not in keeping with the area;
- The boat when previously moored there was an eyesore and spoilt the aesthetic of the area;
- Had planning permission been sought prior to the piling etc it would have been objected to by most residents of Upnor;
- The area has never been used as a permanent mooring area previously and is not designated as such, nor should it be;
- Concern that having ignored planning permission previously, what is going to stop the people involved building more in the future and applying retrospectively;
- Previous order to remove the piling, pontoon and ramp has been ignored, showing a complete disregard for process also;
- There is no indication as to what type of vessel would use the proposed facility - given that at low tide much of the proposed new pontoon would be on the mud or in very shallow water, site would be unsuitable for yachts; cabin cruisers and/or jet skis but it would be suitable for hovercraft or houseboats. It

would appear that this is another attempt to accommodate one or more houseboats at the site and, as such, would contradict the decision of the Planning Inspector;

- Where is the pedestrian access to the site;
- It could well be that the current proposal plans to accommodate more than one vessel thus exacerbating the detrimental effect on the riverscape;
- Nightingales and kingfishers inhabit the nearby and adjacent bushes;
- At low tide many birds use the mud flats at low tide to get food; this would be denied with the mooring of houseboats on the site;
- How would a biodiversity gain occur if the proposed development was permitted;
- Will the foul sewage simply be dumped in the river;
- No provision for waste storage and collection;
- At present the types of vessels in the river are predominately yachts, or small cruisers which are anchored within the river on bouys and we consider this should be the method adopted;
- The removal safely of ALL the existing piles is essential, to maintain the general and usage of the local river;
- Parking;
- Conflict of this new proposed venue when you consider 2 such organisations already exist who provide such facilities. This will deplete business from them while in a difficult economic climate;
- The river is used by large vessels constantly and the impact on this proposal could be important. When viewing re such vessels leaving heading upstream, the rear end of the vessel turns in towards the shore in this proposed vicinity and query how much of an impact this will have on any pontoons;
- Due to extremely high tides, it is likely that the piles supporting the proposed pontoon would need to be much taller than planned if it is to remain usable during periods of very high water and consequently adding further unsightliness to the proposed development;
- The piles as they were originally installed are inappropriate in design terms - the inspector did not conclude that it was the overall number of piles that made them harmful but their general appearance per se;
- The proposal to reduce the height of the piles, whilst resulting in a 2m reduction, does not appear to be evidenced by any suggestion as to why that height is necessary. Given the concerns expressed by the Inspector in the context of the enforcement appeal it seems that there is at present insufficient evidence provided to demonstrate why the piles need to be of this height;
- It is noted that 2 are shown to the east of the application site and completely separate to the pontoon and walkway. There is no indication why these are required or how these would function for the mooring of boats;
- The supporting planning statement seeks to justify a height of 6m to a leisure appearance but no such evidence has been provided indicating that such heights relate to leisure uses;
- The suggestion that they would barely be visible from the landward side seems unfounded. If accurately shown, they would be visible along the Public Right of Way in front of Shaftesbury House running westwards whilst also similarly visible running eastwards along Albion Place to the yacht club;

- The access to the application site is constrained, and the layout shown with the submission provides limited details as to the precise specifications of the means of access;
- The submitted ecology information does not appear to have assessed the implications of the loss of the 'on-land' ecology and only the matters affecting the river. The applicant ought, therefore, to reassess the baseline calculations to include for the loss of the scrub and undertake any additional PEA work as required;
- The employment generation is entirely unfounded. There is no evidence at all to show how provision of leisure moorings would generate employment, or indeed strongly contribute to the economy. No evidence is shown to demonstrate that there is indeed a need for additional leisure moorings in the area to support any employment claim. The employment element is, therefore, entirely unproven and should be completely disregarded in the planning balance;
- If the council are minded to grant consent in this instance that appropriate planning conditions and/or legal obligations are proposed to ensure that no vessels be permanently moored at the application site whether for leisure purposes or not and once any such use is deemed surplus to use all infrastructure be removed from the application site within 9 months as per the requirements of the enforcement notice.

**Medway Yacht Club** object to this development base on the following points:

- Drawings not accurate, the northern boundary adjoining Upnor Road is 1 metre away from the road as per the fence erected by the Arethusa development - how is access gained to the site;
- Ask that a covenant for the number, size and type of vessels using this facility.
- Original development at this site proceeded without planning permission and applicants have not removed the piles as instructed to do so by the end of March 2025;
- If vessels are to be moored permanently in this location they must be in-keeping with the surrounding area and not obstruct the river and shoreline views, we all enjoy;
- There is no right of access, requested or granted via Medway Yacht Club
- All cars should be parked in bone-fide car parking spaces;
- There should be a Maximum period of stay for any boat and minimum period prior to same boat returning;
- There should be a maximum size of boat, barge or other mooring;
- Ther should be no noise after 11pm;
- Piles, pontoon and fencing are unsightly;
- Once a spot where families would enjoy the riverside; fishing, crabbing, birdwatching and picnics we were able to enjoy this outdoor space. There were always families sitting on the bench and having fun around the old Pill-box. This is an area that has been lost to the village community.

Following receipt of amended plans the following responses have been received:

**Rochester Oyster and Floating Fishery (ROFF):**

- Strong objection remains as previously advised;
- Position was set out at the previous public inquiry;
- ROFF have not agreed to the disruption caused to the river bed which is a requirement by Act of Parliament;
- Irrespective of any planning permission granted without ROFF agreement the development is illegitimate;
- Apologies for the short response due to my personal circumstances.

**Marine Management Organisation (MMO)** have advised that the applicants should be directed to the MMO's online portal to register for an application for marine licence. A wildlife licence is also required for activities that that would affect a UK or European protected marine species.

Under the Marine and Coastal Access Act 2009 ch.4, 58, public authorities must make decisions in accordance with marine policy documents and if it takes a decision that is against these policies it must state its reasons.

**Environment Agency** reiterate their previous response.

**Medway Yacht Club** reiterate the previous objection and add the following comments:

- The revised mooring plan rather disingenuously shows a mix of canal boats and smaller craft on the pontoon moorings when it is highly likely that the moorings will preferentially be used by eight or ten residential barges;
- If the development is approved, request that if the operator ceases to trade, then the whole set up is removed;
- No mention of the access to the terrestrial or pontoon areas in the Arethusa Wharf Biodiversity Net Gain Design Stage Report.

**Two letters of objection:**

- No substantive difference between this application and the previous one;
- High Court ruling required the existing piles to be removed;
- Proposed plan is misleading as it implies moorings for a small number of barges and some other smaller craft whilst the pontoon layout is optimized for eight, possibly ten 'residential' barges;
- Residential barges have no history along this stretch of the Medway and their presence would detract significantly from the visual amenity of the Upnor area, both from the Upnor side and from St Mary's Island;
- There are already a number of marinas elsewhere along the tidal Medway in more suitable, established locations;
- The development is in the wrong place and will significantly impact on the visual amenity of Upnor as seen from both river banks;

- Concern about unsightly boats that will have the same impact as the previous houseboat;
- Concerns that any permission will be adhered to.

## **Development Plan**

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2024 (NPPF) and are considered to conform.

The Emerging Local Plan has been submitted to the Inspectorate for examination. The policies within this version of the emerging plan have weight in the determination of planning (and associated) applications. However, due to the nature of this proposal, the stage of the emerging Local Plan, the existence of relevant adopted Policies in the Medway Local Plan (2003) and guidance in the NPPF it is considered that the proposal falls to be considered with regard to the adopted policies and guidance in the NPPF.

The assessment also takes in to account the South East Inshore Marine Plan (2021).

## **Planning Appraisal**

### Background and principle

The site is located south of Upnor Road, in Lower Upnor. The site is positioned to the south of the former Arethusa Venture Centre, with which the wharf has historically been linked. The site lies partly within (the land) and partly outside (the riverbed) of the confines of Lower Upnor as set out on the Proposals map of the Medway Local Plan 2003.

The site is within a Tidal Flood Area, within Flood Zone 3 and located within a Marine Conservation Zone. There is a Site of Special Scientific Interest (SSSI) found on the outskirts of Lower Upnor, however, the site does not lie within the boundaries of the SSSI.

There are three nearby Grade II listed 'buildings', the "Ship's Figurehead from the Arethusa", "Boundary Stone (Old London Stone), Upnor" & "Obelisk (New London Stone), Upnor".

This planning application follows the outcome of an appeal (APP/A2280/C/23/3315311) relating to enforcement notice 'ENF/22/0187'.

Enforcement appeal 'APP/A2280/C/23/3315311' was in relation to an enforcement notice served for:

- a) the material change of use of the land for the mooring of a water borne vessel used for residential purposes;
- b) the operational development consisting of piles being driven into the riverbed of the River Medway within the land to enable the mooring of

water borne vessels and the construction of a jetty and steps to create an access onto the riverbank on the land.

The water borne vessel for residential purposes has been removed and is not part of this planning application. That being said, for clarification, it is accepted that boats can be lawfully moored at the site and that this is a legitimate fallback position, and it is considered that as a general mooring, boats may come and go from time to time and are not permanent features where the character of the use of the land does not change.

The appeal inspector advised (para 63) that *“it does not appear that there is any control as to the type of boats that could be moored at the site, or how long they could be moored there”* and this is not in dispute, however, all vessels would need to be self-propelled.

Turning to part (b) of the appeal, when considering the steps and ramp, the Inspector concluded at paragraph 53:

*“The houseboat is accessed via a gangway/ramp and steps, which run parallel to the wharf wall. These features appear entirely at home in this riverside, wharf setting. Consequently, they do not harm the character or appearance of the area”.*

At para 54 the inspector set out that the piles:

*“are also very tall and have a utilitarian, engineered character. In this particular setting, not associated with any commercial use, and given their number, they result in a cluttered, somewhat industrial appearance and do not fully integrate into their surroundings. They are also highly prominent.”*

Again, at para 62: -

*“The visual harm arising from the piles also gives rise to conflict with the general principles for built development set out in Policy BNE1.”*

This application seeks to reduce the number of piles from 18 to 10, and to reduce the height of the remaining piles from approx. 8m to 6m (it should be noted that as the riverbed falls away from the wharf and is undulating, the length of piles above the riverbed will vary, but they will match in terms of level AOD), which provides both a material reduction in both the number and height of the piles and is considered to be consistent with the Inspector’s report, creating a less cluttered feel on site, and allowing them to integrate better into their surroundings.

The application seeks an additional pontoon approx. 2.6m in width and 26m in length at a right angle to the existing gangway for the mooring of leisure boats.

Policy S3 (River Medway) of the Local Plan states that proposals which are consistent with nature conservation, landscape and hydrological policies and which have no adverse impact upon coastal archaeology will be permitted that develop the River Medway for:

- (iii) *appropriate commercial, tourism and leisure development along the river's edge of a high quality design;*
- (iv) *recreational and tourism purposes.*

The preamble to Emerging Local Plan Policy T22 (Marinas and Moorings) sets out that existing marinas in Medway operate at, or close to, full capacity and that facilities for visiting vessels are currently limited. Evidence at the regional level indicates that there is a shortfall of marina provision along the North Kent coast between Ramsgate harbour and facilities around the Medway Estuary. Therefore, proposals for upgraded or new high quality marina facilities and amenities will be supported in principle.

Under Policy T22 planning permission for marinas and moorings will be granted if the application demonstrates how the proposed development meets a proven need.

The current existing moorings close to the site include:

- Upnor Sailing Club - 86 sheltered moorings on the Medway close to Chatham Historic Dockyard. Upnor Sailing Club is for sailing vessels and while it can accommodate bookings for cruisers and other estuary vessels the main use is as a sailing club;
- Medway Yacht Club - this provides over 200 sheltered moorings for boats from 18 to 42 feet located on the tidal River Medway;
- Chatham Maritime Marina – following an expansion, the marina now has 412 berths close to a factory outlet shopping complex, multiscreen cinema, and numerous restaurants and bars.

Other than the marinas/mooring above, there are very limited offerings for river users within Lower Upnor and the surrounding area. There is, therefore, a clear need for additional mooring points, specifically smaller ones that will cater to users who are looking to avoid expensive mooring prices like they may find within Chatham Maritime Marina.

The need for further moorings has been demonstrated already within the work of Medway Council and its consultants in the formulation of Policy T22.

Policy T22 sets out that planning permission for marinas and moorings will be granted in urban locations if it is supported by the provision of other commercial leisure uses at an appropriate scale, without undermining the role, vitality and vibrancy of town centres.

The Arethusa Wharf is located in Lower Upnor and while not an urban location, there are pubs and restaurants for tourists to use. The mooring is relatively small in scale but will help to address existing need and is considered of an appropriate scale compared to the scale of Lower Upnor and the facilities it provides.

The use of the site as a wharf is existing and, therefore, the retention of steps, ramp and pontoon and the placement of an additional pontoon, with the retention of 10No. piles (reduced to approx. 6m in height), is considered to be acceptable in principle

and in accordance with Policy S3 of the Local Plan and Policy T22 of the Emerging Local Plan.

The second main element of the proposals seeks the change of use of the former toilet building to supply facilities for those mooring boats including provision of WC and shower, drying and storage facilities. There will be no external changes to the existing building, with all proposed changes taking place internally. The building will include three storage areas, with a separate WC and shower.

It is considered that the current toilet block on site is underutilised. The application proposes to utilise the building as an ancillary building for leisure activities at the wharf. Policy L13 (Water Based Leisure) of the Local Plan outlines that the development of water based leisure facilities along the River Medway will be permitted, subject to the following criteria:

*(i) there is no adverse effect on nature conservation interests;*

This is discussed in the Ecology section of the report below.

*(ii) there is adequate land based access for pedestrians, cyclists and road traffic; and*

The section of Upnor Road adjacent to the site isn't intensively used, rather the majority of users of that part of the road are those who are visiting for leisure activities. The road is suitable for both vehicle and bicycle access. Additionally, the site can be accessed on foot by the promenade which runs adjacent to the river Medway.

*(iii) it does not prejudice the amenity of local residents, adjoining uses or other users of the River Medway.*

The development will have minimal, if any, impact on residential amenity of those living along Upnor Road. This section of Upnor Road and Albion Place, close to the River Medway, is characterised by water leisure uses such as a yachting and sailing clubs. Therefore, it is considered that the proposed leisure use at the site will integrate seamlessly into the area. The 'Ship Tavern' and 'The Pier' public houses are within 250m of the site, and it is likely that future users of the site will visit both, to the benefit of the local economy.

Policy T22 of the Emerging Local Plan sets out that applications for Marinas/Moorings should have adequate land-based utility infrastructure and supporting facilities, including sewage, waste, water, secure storage and washing, which the conversion of the toilet block facilitates. A major benefit of this proposal is that there is an existing building that can provide sewage, waste, water and secure washing facilities for users, immediately adjacent to the pontoons.

### *Design*

Development Plan policy places considerable emphasis on the importance of achieving high quality buildings and places. Paragraph 131 of the NPPF states that

good design is a key aspect of sustainable development. Paragraph 135 adds that developments should add to the overall quality of the area, be visually attractive, and sympathetic to local character, including the surrounding built environment and landscape setting.

Local Plan Policy BNE1 seeks to ensure that the design of development is appropriate in relation to the character, appearance and functioning of the surrounding area. The Emerging Local Plan Policy T1: High Quality Design and Amenity sets out that development in Medway should be of high-quality design making a positive contribution to and responding appropriately to the character and appearance of its surroundings.

Apart from the very western end of the jetty, the development will not be highly visible from the landward side unless on the application site itself. The steps over the wall are visible, but these are considered very similar in form and materiality to others along the riverside.

There are many mooring piles along this stretch of the Medway, and they are considered to be an acceptable feature along the river. They are also a practical means of securing boats and an important safety measure for users of the river.

The presence of piles is consistent along the Lower Upnor riverside and, as with the steps, and pontoon, are very much part of the character of the locality. The retention of the existing development and the addition of a further pontoon is consistent with what can be expected in this river location.

The removal of 8no. piles and reduction in height of the taller piles ensures the piles have a 'leisure' appearance, rather than an industrial appearance, as was the concern of the Inspector.

With regard to the amenity block, there will be no external changes to the existing building, with all proposed changes taking place internally.

For the reasons set out above the proposal is considered to be acceptable in relation to Policy BNE1 of the Local Plan, T1 of the Emerging Plan and paragraphs 131 and 135 of the NPPF.

### *Amenity*

Paragraph 135(f) of the NPPF asserts that achieving well-designed places should include creating a high standard of amenity for existing and future users. According to Local Plan Policy BNE2, all development should secure the amenities of its future occupants and protect those amenities enjoyed by neighbouring properties. The design of the development should have regard to privacy, daylight and sunlight, noise, vibration, light, heat, smell and airborne emissions and activity levels and traffic generation. Policy T22 of the Emerging Local Plan also sets out that moorings should not adversely impact amenity, particularly with regard to the waterways, in terms of access, servicing and car parking provision.

Due to the distance of the site from residential properties along Upnor Road, it is considered that there will be minimal, if any, impact from the development on residential amenity with regard to loss of outlook, daylight, sunlight or privacy. This is reinforced by the fact that the new built development will be below the promenade and will, therefore, not be perceptible from public view unless immediately adjacent to the site.

The exterior of the existing toilet block will remain exactly the same and consequently will have no impact on visual amenity.

There are two Public Houses nearby, boatyards and Wharves, the Yacht Club and the riverside walk and public car park. Any minor levels of noise associated with the moored boats or facilities in the old toilet block are considered to be minor in this setting.

It is considered that the impact on amenities is acceptable and in accordance with Policy BNE2 of the Local Plan, paragraph 135(f) of the NPPF and Policy T22 of the Emerging Local Plan.

### *Heritage*

There are three nearby Grade II listed 'buildings', however, these are structures and items - the 'Ship's Figurehead from the Arethusa', 'Boundary Stone (Old London Stone), Upnor' & 'Obelisk (New London Stone), Upnor' and the WWII pillbox a non-designated heritage asset.

Policy BNE18: states that "*Development which would adversely affect the setting of a listed building will not be permitted.*"

The Emerging Local Plan Policy S8: Historic Environment, seeks to ensure the continued contribution that the historic environment brings to Medway. The Council remains committed to the conservation, enhancement and enjoyment of the historic environment, including the heritage assets and their distinctiveness and characteristics.

Chapter 16 of the Framework sets out the Government's policies for the conservation and enhancement of the historic environment. Paragraph 212 requires when considering the impact of a proposed development on the significance of a designated heritage asset, that great weight should be given to the asset's conservation (the more important the asset, the greater that weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than "substantial harm to its significance.

Paragraph 213 states that "*Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of: a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional; b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II\* listed buildings, grade I and II\* registered parks and gardens, and World Heritage Sites, should be wholly*

*exceptional. It is also recognised that heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. It is noted that substantial harm to or loss of curtilage listed buildings (grade II listed building) should be exceptional and substantial harm to, or loss of designated heritage assets of the highest significance should be wholly exceptional”.*

Paragraph 215 states that “*where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use”.*

Paragraph 216 states that “*the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”.*

The proposal demonstrates minimal harm to the heritage assets and non-designated heritage asset with no building works occurring in a location that would affect their setting or historic interpretation, meeting the requirements of the NPPF, Local Plan and Emerging Local Plan.

### *Highways*

Policy T1 (Impact of Development) of the Local Plan states that proposals will be permitted provided that the highway network has adequate capacity to cater for the traffic which will be generated by the development, taking into account alternative modes to the private car; the development will not significantly add to the risk of road traffic accidents; the development will not generate significant H.G.V. movements on residential roads; and the development will not result in traffic movements at unsociable hours in residential roads that would be likely to cause loss of residential amenity.

Policy T22 of the Emerging Local Plan sets out that applications for moorings should not have a significant adverse impact on the highway network.

Given the small-scale nature of the proposals, it is considered that the development will not lead to a significant negative impact on the surrounding road network.

Lower Upnor Car Park is located approximately 50m to the northeast of the site. This is a free car park with approx. 30 spaces, and it is assumed that this will be utilised to accommodate vehicle parking related to the site.

Overall, it is not anticipated that the proposals would have a significant adverse impact in terms of transport in accordance with Policies T1, T2, T3 and T13 of the Local Plan, paragraphs 110 and 116 of the NPPF and Policy T22 of the Emerging Local Plan and, therefore, there are no transport-based objections to the proposal.

## *Flooding*

Policy CF13 (Tidal Flood Risk Areas), of the Local Plan sets out that development will not be permitted within a tidal flood risk area if it harms the integrity of the flood defences; fails to provide for a means of escape for people in the event of a flood; introduces residential living and sleeping accommodation below the estimated flood level; introduces mobile homes or caravans; or introduces new holiday accommodation between October and May.

Policy T22 of the Emerging Local Plan seeks to ensure that proposals for moorings do not result in increased flood risk further downstream or elsewhere.

The Flood Risk Assessment that accompanied the application advises that the adjacent wharf is protected by existing raised defences which provide a 1 in 1000-year level of protection which would provide a safe escape route. It is considered that the proposals pass both the Exception and Sequential Tests. In the particular circumstances of the case, it is concluded that any risks arising to occupiers and indeed emergency services can be adequately managed.

As such no objection is raised with regard to the aforementioned Policies.

## *Ecology*

Policies BNE37 (Wildlife Habitats) and BNE39 (Protected Species) of the Local Plan seeks to ensure that development does not cause a loss, directly or indirectly, of important wildlife habitats or statutorily protected species and/or their habitat.

Policy T22 of the Emerging Local Plan, sets out that moorings should not conflict with neighbouring uses, have a significant adverse impact or result in unacceptable environment consequences and should have specific regard to the SPAs, Ramsar sites, Sites of Special Scientific Interest and the Marine Conservation Zone.

Policy SE-MPA-1 of the South East Inshore Marine Plan (2021) relates to Marine Protected Areas (MPAs) and aims to ensure that development and other activities are planned and managed in a way that protects the integrity and ecological health of these areas. It emphasizes the importance of considering potential impacts on MPAs and their features when making decisions about development and other activities within and around them.

*Marine Conservation Zone* - The application site lies within the Medway Estuary Marine Conservation Zone (MCZ). The MCZ encompasses the Medway Estuary from Rochester down to its mouth and extends seaward to include an area between Sheerness and the Isle of Grain (DEFRA et al. 2019). This site became a Marine Conservation Zone (MCZ) in 2013 with an additional feature, European smelt (*Osmerus eperlanus*), being added in 2019, along with a small extension to the site boundary.

The MCZ is designated for a range of habitats, including the following habitats found on-site: low energy intertidal rock, intertidal sand and muddy sand. The MCZ is also

designated for the presence of tentacled lagoon worm and the fish, smelt. Across its area, the MCZ is used by commercially important fish as a nursery ground.

Impacts from proposals include the direct loss or degradation of approximately 130.3 square metres (0.01 ha) of low energy intertidal rock and intertidal sand and muddy sand due to the piles and pontoons, and the indirect loss or degradation of approximately 261.2 square metres (0.03 ha) of largely intertidal sand and muddy sand caused by up to an assumed 10 moored boats (based on submitted plans). This is a total loss/degradation of very approximately 0.04 ha of habitat.

No records of tentacled lagoon worm have been found in or around Upnor and none of these worms were reported during surveys of the site carried out in 2023. In the submitted ecological impact assessment, it is concluded that tentacled lagoon worms will not be impacted by proposals.

A precautionary works method statement to carry out activities sensitively is recommended due to the fact activities are planned within a Marine Protected Area. This method statement will need to include measures to avoid and minimise impacts to the environment (such as excessive noise, habitat disturbance and pollution incidents).

A condition is recommended to control refuelling and maintenance activities on-site, to limit the potential for fuel spills/pollution incidents when the moorings are in operation. A condition is also recommended to ensure that there is sufficient and suitable waste disposal and waste collection provision is made available during the operation of the development.

*Birds* - When considering the potential for impacts to birds from proposals, the impacts of the proposals relating to habitat loss on-site and disturbance effects both on-site and off-site should be considered.

Medway Yacht Club is within 300m of the site. The site is also on the edge of Lower Upnor and development such as Lower Upnor Car park and Lower Upnor Riverside Promenade.

The submitted ecological impact assessment indicates that the foreshore in the vicinity of the site was previously used in association with a young person's marine activities centre which is no longer present. Additionally, the public toilets and seating at the site are no longer in-use. The existing and previous uses on and around the site indicate relatively high levels of human disturbance in this area, especially in warmer weather. This is likely to reduce the value of the area for birds, although birds may make most use of the site during the winter for foraging when human disturbance is expected to be at its lowest.

A maximum of 15 boats will be moored on-site following development. In the context of the size of the estuary and number of vessels using it (approximately 3,800) the additional number proposed is considered fairly insignificant. However, the cumulative effect of sustained increases in the number of boats and moorings within the estuary is likely to have a negative effect on the local ecology.

One wintering bird survey was carried out at the end of the wintering bird survey season, as such KCC Ecology requested further survey data in order to establish whether the comings and goings of boats and users would result in disturbance to wintering birds. However, due to the time of the year this was requested, the survey timeframe for wintering birds has been missed for this year. In order to mitigate any cumulative issues that this site may have with regard to wintering and foraging birds a condition is recommended to only allow boats to be moored on the site between the months of November and February each year to allow for birds to forage without boats coming and going from this site. It is considered that this would have the effect of preventing disturbance to the wintering birds, especially when considering the fallback position that boats can use the mooring facility without seasonal restrictions. Subject to this condition it is considered that on balance the application will have no significant new impacts on the wintering birds.

*Invasive Species* - The non-native invasive species Pacific oyster and Australian tube worm were observed on-site. During construction, a method statement should govern working methodology to minimise the chance of spreading non-native invasive species to or from the site. This is recommended to be secured by condition should planning permission be granted.

*Terrestrial Habitats* - A site walkover to document terrestrial habitats was undertaken 24th October 2025. This walkover identified the following habitats on-site: unmanaged modified grassland, bramble scrub, buildings, hardstanding. Breeding birds could occur in any dense vegetation on-site e.g., bramble scrub, or in the buildings and trees. It is, therefore, recommended that a precautionary working method statement is secured by condition should planning permission be granted, and should the breeding bird habitat/grassland be proposed for clearance/impacts, to avoid and mitigate harm to protected and priority species that may occur on-site.

*Bats* - An assessment of the buildings indicates that the toilet for internal alterations has negligible suitability for roosting bats, but that the WW2 pillbox does have suitability for roosting bats.

Subject to the above recommended conditions the application is considered acceptable and in accordance with the aforementioned policies and NPPF.

#### *Biodiversity Net Gain (BNG)*

This BNG condition relates to all planning permissions and sets out that:

- (2) *The condition is that the development may not be begun unless—*
  - (a) *a biodiversity gain plan has been submitted to the planning authority (see paragraph [14](#)), and*
  - (b) *the planning authority has approved the plan (see paragraph [15](#)).*

Due to the fact that this application is retrospective it is not possible to comply with this condition and as such the application is exempt from statutory BNG. As noted in the section above the applicant is still proposing some BNG as part of ecological enhancements, which are proposed to be secured by condition.

Under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 and paragraphs 187 through 195 of the NPPF 2024, biodiversity should be maintained and enhanced through the planning system. It is, therefore, recommended that a condition for a biodiversity enhancement plan is attached to the decision notice should planning permission be granted for this application.

### *Bird Mitigation*

As the application site is within 6km of the North Kent Marshes SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in combination, on the coastal North Kent Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest. A decision from the Court of Justice of the European Union detailed that mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a full 'appropriate assessment' is needed under the Habitats Directive. There was, therefore, a need under the Conservation of Habitats and Species Regulations 2017 for an appropriate assessment to be carried out as part of this application.

As a result of the Appropriate Assessment Natural England has advised that an appropriate tariff of £350.16 per dwelling (excluding legal and monitoring officer's costs) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries by way of mitigation for the adverse effects of the development. This tariff should be collected for new dwellings, either as new builds or conversions (which includes HMOs, tourist and student accommodation).

These strategic SAMMS mitigation measures are being delivered through Bird Wise North Kent, which is the brand name of the North Kent Strategic Access management and Monitoring Scheme (SAMMS) Board, and the mitigation measures have been informed by the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014. Further information regarding the work being undertaken is available at The Bird Wise website which can be found at <https://northkent.birdwise.org.uk/about/>.

The applicant has paid this obligation, therefore, there is no objection is raised under Policies S6 and BNE35 of the Local Plan and paragraphs 186 and 187 of the NPPF.

### *Local finance considerations*

There are no local finance considerations.

### **Conclusions and Reasons for Approval**

It is considered that the principle of the development accords with Policy S3 and Policy L13 in respect of proposals for water based leisure and Emerging Local Plan Policy T22.

The proposals will re-purpose an underutilised toilet block adjacent to the river and will be used ancillary to the leisure activities at the wharf, providing a WC, shower and dry storage facilities in accordance with Local Plan Policy L13.

Piles are found along the Lower Upnor riverside and, as with the steps, and pontoon, are very much part of the character of the locality. The reduction in the number and height of the piles and the addition of a further pontoon is considered acceptable within this location and the use of the site for the mooring of boats respectful of the character of the wharf.

The proposals will provide for ecological improvements in accordance with paragraphs 187 through 195 of the NPPF.

Subject to conditions restricting the use of the site to leisure based moorings with no permanent residential element the proposal is considered to be in accordance with Policies S3, BNE1, BNE2, BNE18, BNE35, L13 T1, and T13 of the Local Plan, the provisions set out the National Planning Policy Framework and the Emerging Local Plan Policy T22. Therefore, the application is recommended for approval.

The application is being referred for Committee determination due to the number of representations received expressing a view contrary to the recommendation and the complex planning history of the site.

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## **Background Papers**

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess1.medway.gov.uk/online-applications/>